

III.B - Proposed Amendments to
Foreign Legal Consultants Rules
and Regulations- Request for
Public Comment

DATE: November 22, 2005

TO: Members, Board Committee on Member Oversight

FROM: Phyllis J. Culp, Director Office of Certification & Membership Records

SUBJECT: Foreign Legal Consultant Program - Change to Security Requirement
(Dishonest Conduct)

ATTACHMENTS: A. Proposed Registered Foreign Legal Consultant Rules and Regulations
B. Revised Registered Foreign Legal Consulate Rules and Regulations,
Legislative Style.
C. List of Current Registered Foreign Legal Consultants (RFLC)
D. AB1529 - Text

EXECUTIVE SUMMARY

The Office of Certification & Membership Records requests that this Board Committee publish proposed amendments to the Registered Foreign Legal Consultant Rules and Regulations, as set forth in Attachment B, for a 60-day comment period.

A Registered Foreign Legal Consultant (RFLC) is an attorney who is not a member of the State Bar but has been certified by the State Bar to render limited legal services in California. Among the requirements to be certified, an applicant must maintain security for claims for dishonest conduct in an amount of at least \$50,000 by insurance, letter of credit or written guarantee. Since the inception of the FLC program in 1987, it has been difficult and expensive for applicants to provide dishonest conduct coverage and as a result the program has not expanded. There have been no claims for such conduct to date.

To encourage foreign attorneys to register as FLC=s, in 2003 a strategic initiative was proposed to modify the security for dishonest conduct requirement. The modification would allow RFLCs to participate in the Client Security fund. Business & Professions Code section 6140.5 provides for a Client Security Fund to relieve or mitigate losses caused by dishonest conduct of the 'active members' arising from or connected with the practice of law. A change in the statutory language to authorize RFLC's participation in the Client Security fund was made on September 27, 2005. The change to the statute expanded the purposes of the client security fund to include losses caused by the dishonest conduct of RFLCs. Therefore, the RFLC rules 6.2 and 6.3 must be amended to reflect this change.

Board members seeking additional information or questions on this item please contact Phyllis Culp at phyllis.culp@calbar.ca.gov or 415-538-2118.

ISSUE

Should the Committee authorize the circulation of proposed modifications to the Registered Foreign Legal Consultant Rules and Regulations?

BACKGROUND

A Registered Foreign Legal Consultant (RFLC) is an attorney who is not a member of the State Bar but has been certified by the State Bar to render limited legal services relating to the law of the country in which the foreign attorney is authorized to practice law. An RFLC cannot make court appearances, prepare various kinds of documents, including those affecting realty located in California or the United States, cannot provide legal advice on the law of California or hold himself or herself out as a member of the bar of California.

Although a RFLC is not a member of the State Bar, it would seem appropriate to encourage more foreign attorneys to register in order to provide the public with greater access to attorneys with knowledge and expertise in the law of foreign countries. An RFLC is a resource for foreign nationals residing in California who have specific practical problems in his or her home jurisdiction. An RFLC also can provide California attorneys with access to competent advice on foreign law based on actual legal practice and experience. In particular an RFLC can provide California attorneys and law firms, particularly smaller firms and those without foreign offices, with such advice.

Among the requirements to be certified, an applicant must: maintain security for claims for malpractice in an amount of at least \$300,000 and dishonest conduct in an amount of at least \$50,000; be licensed in at least one foreign jurisdiction; and demonstrate good standing in that jurisdiction by submitting a certificate issued by the foreign authority having disciplinary jurisdiction over the attorney. Once registered with the State Bar, a RFLC may practice law in California but such practice is restricted to the law of the foreign jurisdiction(s) in which the RFLC is licensed. To maintain certified status, a RFLC must file an annual report/renewal form with the State Bar, including current evidence of dishonest conduct coverage.

The Foreign Legal Consultant Program (FLC) operates pursuant to rule 988, California Rules of Court [Registered Foreign Legal Consultant], which was adopted by the California Supreme Court on April 2, 1987, and the Registered Foreign Legal Consultant Rules and Regulations, adopted by the Board of Governors in 1994 and revised in 1996 and 1997.

Currently there are 34 RFLC=s. For further information on the program see www.calbar.ca.gov; select "Attorney Resources" and then click on "Foreign Legal Consultants." Attachment C is a List of Current RFLC=s.

DISCUSSION

In California, RFLCs are required to maintain security for claims arising out of the dishonest conduct of the RFLC. When the requirement was adopted by the Board of Governors in April 1987 (April 141), the Board recognized that the cost and availability of the security for dishonest conduct coverage might be problematic. The text of the Board resolution was:

FURTHER RESOLVED, that the Board acknowledges that the Special Committee on Registered Foreign Legal Consultants of the State Bar and others have expressed

concern about the cost and availability of the security contemplated by the above resolutions for claims resulting from errors and omissions and dishonest conduct, that because no foreign legal consultants have as yet been required to furnish such coverage it is difficult to determine the cost and availability thereof, and that the **Board is willing to consider alternatives to the requirements established by these resolutions which would provide the assurance of proper professional conduct and responsibility required by the rule if such security turns out to be generally unavailable or impractical to obtain**, upon the recommendation of the Office of Professional Standards or the Special Committee on Registered Foreign Legal Consultants of the State Bar. (Emphasis added.)

In the intervening eighteen years, the concern relating to the cost of acquiring insurance has been realized. The typical dishonest conduct policy, in California, is written by Chubb Specialty Insurance and costs in excess of \$2,000 a year. The cost of procuring dishonest conduct coverage has been one of the primary hurdles to qualifying for the Registered FLC program.

In 1997 the RFLC program Rules and Regulations were amended to permit a RFLC to satisfy the security requirement for dishonest conduct by guarantee. At that time it was hoped that a RFLC would more easily be able to satisfy the security requirements using a guarantor for the claims. However, eight years of experience using the guarantee has shown that the barrier still exists. Of the 34 RFLCs, 15 are with law firms or other professional organizations and 19 are solo practitioners and therefore do not have someone of sufficient net worth to act as a guarantor.

It is important to note that since the inception of the program the Office of Certification has not been made aware of a claim against a RFLC for dishonest conduct. Currently California has thirty-four RFLCs. New York, which is a state similar in some respects to California, has in excess of 200 foreign attorneys registered. New York does not require security for claims.

Client Security Fund (Business & Professions Code sections 6140.5 and 6140.55)

In January 2006, Members of the State Bar of California will pay \$40 a year to the Client Security Fund (Bus. & Prof. Code §6140.55). The Client Security Fund relieves or mitigates pecuniary losses caused by the dishonest conduct of an active member of the State Bar of California (Bus. & Prof. Code ' 6140.5(a)). The Client Security Fund will pay up to \$50,000 per claim based on the dishonest conduct of an active member arising from or connected with the practice of law.

In 2004 , the Multijurisdictional Practice Program (MJP) was instituted, This program authorizes non-California attorneys to also provide limited legal services as in-house counsel and legal services attorneys for specifically identified employers. Language was added to AB 1529 (the 2006 fee bill) to include MJP attorneys and RFLCs in the Client Security Fund.

Legislative Counsel's Digest (February 22, 2005 AB1529 Jones) states in part that:

“Existing law establishes the Client Security Fund for the purpose of relieving or mitigating pecuniary losses caused by the dishonest conduct of active members of the State Bar.

This bill would expand the purpose of the Client Security Fund to include relieving or mitigating pecuniary losses by the dishonest conduct of Foreign Legal Consultants registered with the State Bar and attorneys registered with the State Bar under the Multijurisdictional Practice Program.” (Attachment D AB 1529)

Since Business and Professions Codes §6140.5 and §6140.55 were amended this year to authorize RFLCs to participate in the Client Security Fund, staff recommends that the requirement in RFLC rules 6.2 and 6.3 requiring RFLCs to “maintain security for claims resulting from pecuniary losses caused by. . .dishonest conduct. . .” be eliminated. Under the proposed rule changes, RFLC’s participation in the Client Security Fund will now be in lieu of providing dishonest conduct coverage. RFLCs will contribute the same amount to the Client Security Fund as members.

A proposed shortened 60 day public comment period is suggested to permit RFLC=s to participate as soon as possible to the new legislation effective date of January 1, 2006 while providing sufficient time for comment.

BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT

None.

FISCAL/PERSONNEL IMPACT

Revenue to the Certification Fund will be reduced by \$40.00 for each of the 34 RFLCs for a total of \$1,360 as these funds will be deposited in the Client Security Fund. There is no Impact to the General Fund. The impact to the CSF fund will studied in consultation with CSF staff.

PROPOSED BOARD COMMITTEE ACTION

If the Board Committee concurs with the foregoing recommendations, it would be appropriate to adopt the following resolution:

RESOLVED that the Board Committee on Member Oversight directs the publication of proposed revision to the Registered Foreign Legal Consultant Rules and Regulations, in the form attached to these minutes and made a part hereof, for a 60 day comment period, and it is

FURTHER RESOLVED that the publication of the foregoing is not and shall not be construed as a recommendation by the Board Committee.

ATTACHMENT A
PROPOSED REGISTERED FOREIGN LEGAL CONSULTANT RULES AND REGULATIONS
(effective January 1, 1994; revised 3/2/96, 6/1/97)

1.0 PURPOSE

The purpose of the Registered Foreign Legal Consultant Rules and Regulations is to authorize a person who is not a member of the State Bar of California or licensed in the United States as an attorney or counselor at law to provide legal advice in California limited to the law of the foreign country in which he or she is licensed to practice law.

2.0 DEFINITIONS

- 2.1 A "Registered Foreign Legal Consultant" is a person who is admitted to practice and is in good standing as an attorney or counselor at law or the equivalent in a foreign country and has a currently effective State Bar Certificate of Registration as a Foreign Legal Consultant.
- 2.2 "Good moral character" is that which is defined in the Rules Regulating Admission to Practice Law in California.
- 2.3 The "Rules" are these Registered Foreign Legal Consultant Rules and Regulations.
- 2.4 The "State Bar" is the chief executive officer of the State Bar, or person or persons designated by the chief executive officer, who shall have the authority to administer and interpret these rules.

3.0 ELIGIBILITY FOR CERTIFICATION

To be eligible to become a Registered Foreign Legal Consultant, an applicant must:

- 3.1 Present satisfactory proof that the applicant has been admitted to practice and has been in good standing as an attorney or counselor at law or the equivalent in a foreign country for at least four of the six years immediately preceding the application, and while so admitted, has actually practiced the law of that country;
- 3.2 Present satisfactory proof that the applicant possesses the good moral character requisite for a person to be licensed as a member of the State Bar of California;
- 3.3 Agree to comply with Section 6.0 relating to security for claims against a Foreign Legal Consultant by his or her clients;
- 3.4 Agree to comply with Section 7.0 relating to maintaining an address of record for State Bar purposes;
- 3.5 Agree to notify the State Bar of any change in his or her status in any jurisdiction where he or she is admitted to practice or of any discipline with respect to such admission;
- 3.6 Agree to be subject to the jurisdiction of the courts of this state with respect to the laws of the State of California governing the conduct of attorneys, to the same extent as a member of the State Bar of California;

- 3.7 Agree to become familiar with and comply with the standards of professional conduct required of members of the State Bar of California;
- 3.8 Agree to be subject to the disciplinary jurisdiction of the State Bar of California;
- 3.9 Agree to be subject to the rights and obligations with respect to attorney-client privilege, work-product privilege, and other professional privileges, to the same extent as attorneys admitted to practice law in California; and
- 3.10 Agree to comply with the laws of the State of California, the Rules and Regulations of the State Bar of California, and these Rules.

4.0 APPLICATION FOR CERTIFICATION

- 4.1 All Applications for Certification must be submitted:
 - 4.1.1 On a form provided by the State Bar;
 - 4.1.2 With all the information requested on the form;
 - 4.1.3 With the appropriate non-refundable processing fee; and
 - 4.1.4 At the designated office of the State Bar.
- 4.2 All Applications for Certification must be accompanied by all requested documents, including, but not limited to:
 - 4.2.1 A duly authenticated English translation of any documents not in English;
 - 4.2.2 A certificate from the authority in the foreign country having final jurisdiction over professional discipline certifying
 - a. that it is the entity having jurisdiction over professional discipline matters;
 - b. the applicant's date of admission; and
 - c. that for at least four of the past six years, the applicant has been in good standing as an attorney or counselor at law or the equivalent; and
 - 4.2.3 A letter of recommendation setting forth the applicant's professional qualifications from
 - a. a member of the executive body of the authority having final disciplinary jurisdiction, or

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- b. a judge of the highest law court or court of original jurisdiction of the foreign country.
 - 4.2.4 Evidence of the required security for claims, which shall be furnished to the State Bar in the form of a written agreement stating that the Foreign Legal Consultant shall maintain security for claims against the Foreign Legal Consultant's acts, errors or omissions and/or dishonest conduct in the rendering of legal services in the amounts as set forth in section 6.0.
 - 4.3 Upon a showing that strict compliance with the provisions of Section 4.2 would cause the applicant unnecessary hardship, the State Bar may, in its discretion, waive or vary the application of those provisions and require the applicant to furnish other evidence in lieu thereof.
 - 4.4 The State Bar may audit the Foreign Legal Consultant at any time to ensure that the Foreign Legal Consultant in fact has the required security for claims as set forth in rule 6.0.
- 5.0 MORAL CHARACTER REVIEW
 - 5.1 Each applicant must be found to possess the good moral character requisite for a person to be licensed as a member of the State Bar of California. The moral character review of all applicants will be conducted by the State Bar's Committee of Bar Examiners. Insofar as applicable and not inconsistent with these rules, the Rules Regulating the Admission to Practice Law in California, as they relate to the determination of whether an applicant for admission as a California attorney is possessed of good moral character, shall be applicable to the determination of whether an applicant for a Certificate of Registration as a Registered Foreign Legal Consultant is possessed of good moral character.
 - 5.2 If the Committee of Bar Examiners concludes that the applicant possesses good moral character, it shall certify that the applicant possesses the good moral character requisite for a person to be licensed as a member of the State Bar of California. Otherwise, the Committee of Bar Examiners shall comply with the Rules Regulating Admission to Practice Law in California insofar as they relate to the procedures to be followed when an applicant for admission to practice law in California has been found not to possess the good moral character requisite for a person to be licensed as a member of the State Bar of California.
- 6.0 SECURITY FOR CLAIMS AGAINST A FOREIGN LEGAL CONSULTANT
- 6.1 The Foreign Legal Consultant shall maintain security for claims for pecuniary losses resulting from his or her acts, errors or omissions in the rendering of legal services that is acceptable to the State Bar, as follows:
 - 6.1.1 If in the form of insurance and the cost of defense is included in the policy limits, in an amount of at least \$150,000 for each claim, with an aggregate limit of \$450,000 for all claims established against the Foreign Legal Consultant during the calendar year, with a deductible portion not to exceed \$10,000, unless any deductible portion in excess of \$10,000 is secured by means of a letter of credit or a written guarantee executed by an active member of the State Bar of California, a California law firm, California law corporation or financial institution;
 - 6.1.2 If in the form of insurance and the cost of defense is not included in the policy limits, in an amount of at least \$100,000 for each claim, with an aggregate limit of \$300,000 for all claims established against the Foreign Legal Consultant during the calendar year, with a deductible portion not to exceed \$10,000, unless any deductible portion in excess of \$10,000 is secured by means of a letter of credit or a written guarantee executed by an active member of the State Bar of California, a California law firm, California law corporation or financial institution;
 - 6.1.3 If in the form of a letter of credit, the total amount of the letter of credit must be maintained at all times at no less than \$300,000. The honor from the issuing bank is not to exceed \$100,000 for each claim and \$300,000 for all claims made during the calendar year; or
 - 6.1.4 If in the form of a written guarantee executed by an active member of the State Bar of California, a California law firm, California law corporation or financial institution, the total amount of the guarantee must be maintained at all times at no less than \$100,000 for each claim and \$300,000 for all claims made during the calendar year.
- 7.0 ADDRESS OF RECORD
 - 7.1 A duly acknowledged instrument in writing shall be submitted to the State Bar with the

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Foreign Legal Consultant's address in the State of California for State Bar purposes. The instrument shall state that if, after due diligence, service cannot be made upon the Foreign Legal Consultant at his or her State Bar address of record, the State Bar of California is authorized to act as an agent upon whom process may be served, with like effect as if served personally upon the Foreign Legal Consultant, in any action or proceeding brought against the Foreign Legal Consultant arising out of or based upon legal services rendered or offered to be rendered within or to residents of the State of California.

- 7.2 Service of process on the State Bar of California pursuant to Section 7.1 shall be made by personally delivering to and leaving with a representative authorized by the State Bar to receive service, duplicate copies of the process and the appropriate fee.

8.0 DENIAL OF APPLICATION

- 8.1 If the State Bar determines to deny an application for certification for any reason, the State Bar shall mail a Notice of Denial of Certification to the applicant that sets forth the reasons for the denial.
- 8.2 An applicant may request, in writing, a hearing on the denial to approve its application within 15 (fifteen) days after such Notice of Denial of Certification is dated.
- 8.3 The appropriate Board Committee shall conduct a hearing within 60 (sixty) days of the State Bar's receipt of the request.
- 8.4 Should the outcome of the hearing permitted by Section 8.2 be adverse to the applicant, the applicant may appeal such decision pursuant to the provisions of California Rule of Court 952(d).
- 8.5 All proceedings under Section 8.0 shall be confidential, unless otherwise requested by the applicant or ordered by the Board of Governors. Insofar as applicable, the Rules of Procedure of the State Bar shall apply to such proceedings. For the purpose of applying the Rules of Procedure, the word "member" therein shall be deemed to mean "Foreign Legal Consultant."

9.0 PERMITTED ACTIVITIES

A Registered Foreign Legal Consultant may render legal services in California, except that a Registered Foreign Legal Consultant may not:

- 9.1 Appear for a person other than himself or herself as attorney in any court, or before any magistrate or other judicial officer, in this state or prepare pleadings or any other papers or issue subpoenas in any action or proceeding brought in any court or before any judicial officer;

- 9.2 Prepare any deed, mortgage, assignment, discharge, lease, or any other instrument affecting title to real estate located in the United States;
- 9.3 Prepare any will or trust instrument affecting the disposition on death of any property located in the United States and owned by a resident or any instrument relating to the administration of a decedent's estate in the United States;
- 9.4 Prepare any instrument in respect of the marital relations, rights or duties of a resident of the United States, or the custody or care of the children of a resident; or
- 9.5 Otherwise render professional legal advice on the law of the State of California, any other state of the United States, the District of Columbia, the United States, or any country other than the country in which the Foreign Legal Consultant is admitted to practice law, whether rendered incident to preparation of legal instruments or otherwise.

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- 10.0 USE OF THE TITLE "FOREIGN LEGAL CONSULTANT"
- 10.1 In connection with activities performed pursuant to these rules, a Registered Foreign Legal Consultant may use the title "Foreign Legal Consultant" only and may not use any other title than "Foreign Legal Consultant." A Foreign Legal Consultant may not use the title "Foreign Legal Consultant" in connection with activities not performed pursuant to these Rules.
- 10.2 A Foreign Legal Consultant must include the name of the country in which the Foreign Legal Consultant is admitted to practice law when using the title "Foreign Legal Consultant."
- 10.3 A Foreign Legal Consultant may include the name of his or her employer, if any, and the title by which the Foreign Legal Consultant is known in the country in which he or she is admitted to practice law when using the title "Foreign Legal Consultant."
- 10.4 A Foreign Legal Consultant may not in any way hold himself or herself out as a member of the State Bar of California.
- 11.0 DURATION OF CERTIFICATE OF REGISTRATION
- Certification by the State Bar shall commence on the date indicated on the Notice of Registration. The State Bar shall renew the Certificate of Registration, provided that the Foreign Legal Consultant timely submits to the State Bar:
- 11.1 A complete Annual Report/Renewal Form; and
- 11.2 Appropriate Special Report forms, if required.
- 12.0 INVOLUNTARY REVOCATION/SUSPENSION OF CERTIFICATE OF REGISTRATION
- 12.1 The State Bar may suspend the Certificate of Registration of a Foreign Legal Consultant:
- 12.1.1 For failure to file the annual report and pay the filing fee, including any fee for late filing;
- 12.1.2 Sixty days following written notice of delinquency sent to his or her address for State Bar purposes.
- 12.2 The State Bar may revoke/suspend the Certificate of Registration of a Foreign Legal Consultant:
- 12.2.1 If any of the requirements for certification no longer exist; or
- 12.2.2 The Foreign Legal Consultant fails at any time to comply fully with the provisions of these rules.
- 12.3 The State Bar shall mail a Notice of Revocation/Suspension of Certificate of
- Registration to the Foreign Legal Consultant setting forth the reasons for the determination to revoke/suspend the certificate and stating that the revocation/suspension shall be effective 10 days from the date the State Bar mails the Notice.
- 12.4 A Foreign Legal Consultant may request, in writing, a hearing to stay the revocation of the Certificate of Registration, which hearing the State Bar may allow or disallow upon good cause shown.
- 12.5 Within 15 days of mailing of the Notice of Revocation of Certificate of Registration, the Foreign Legal Consultant may contest the revocation by sending to the State Bar a written request for a hearing to show cause why the Certificate of Registration should be reinstated.
- 12.6 The hearing permitted by Section 12.4 shall be commenced within 60 (sixty) days of the State Bar's receipt of the request.
- 12.7 Should the outcome of the hearing permitted by Section 12.4 be adverse to the applicant, the applicant may appeal such decision pursuant to provisions of California Rule of Court 952(d).
- 12.8 All proceedings under Section 12.0 shall be confidential, unless otherwise requested by the applicant or ordered by the Board of Governors. Insofar as applicable, the Rules of Procedure of the State Bar shall apply to such proceedings. For the purpose of applying the Rules of Procedure, the word "member" therein shall be deemed to mean "Foreign Legal Consultant."
- 13.0 VOLUNTARY REVOCATION OF CERTIFICATE OF REGISTRATION
- The State Bar may revoke the Certificate of Registration of a Foreign Legal Consultant at the request of the Foreign Legal Consultant.
- 14.0 REPORTS
- 14.1 Each Foreign Legal Consultant shall file an Annual Report/Renewal Form covering the calendar year immediately preceding on a form provided by the State Bar. The Annual Report/Renewal Form shall not be accepted unless submitted:
- 14.1.1 On a form provided by the State Bar;
- 14.1.2 With all the information requested on the Annual Report;
- 14.1.3 With the non-refundable processing fee and any penalty fee, if appropriate;

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- 14.1.4 At the designated office of the State Bar; and
 - 14.1.5 With a certificate from the authority in the foreign country or countries named by the Foreign Legal Consultant having final jurisdiction over professional discipline of persons admitted to practice law in the country or countries, certifying as to the Registered Foreign Legal Consultant's good standing as an attorney or counselor at law or the equivalent, with a duly authenticated English translation of the certificate if it is not in English, or other proof of good standing as the State Bar may permit.
 - 14.1.6 With a Special Report, pursuant to Section 14.2, if applicable.
 - 14.1.7 Reinstatement after suspension. A Certificate of Registration suspended under rule 12.1.1 may be reinstated upon the filing of all delinquent annual reports and payment of all accrued fees and penalties, and payment of any fees and penalties due after the suspension but before the date of reinstatement. Reinstatement shall be effective from the date of compliance.
- 14.2 Each Foreign Legal Consultant shall file a Special Report setting forth any changes no more than 30 days after the change as follows:
- 14.2.1 Address changes shall be filed with the office of the State Bar responsible for regulating Foreign Legal Consultants, in a form acceptable to the State Bar; and
 - 14.2.2 Changes in any of the requirements for certification as set forth in Sections 3.1, 3.3, and 3.5, shall be filed with the office of the State Bar responsible for regulating Foreign Legal Consultants, on a form provided by the State Bar, and must include all information requested on such form.

ATTACHMENT B

PROPOSED REVISIONS

REGISTERED FOREIGN LEGAL CONSULTANT RULES AND REGULATIONS

(effective January 1, 1994; revised 3/2/96, 6/1/97)

1.0 PURPOSE

The purpose of the Registered Foreign Legal Consultant Rules and Regulations is to authorize a person who is not a member of the State Bar of California or licensed in the United States as an attorney or counselor at law to provide legal advice in California limited to the law of the foreign country in which he or she is licensed to practice law.

of attorneys, to the same extent as a member of the State Bar of California;

2.0 DEFINITIONS

2.1 A "Registered Foreign Legal Consultant" is a person who is admitted to practice and is in good standing as an attorney or counselor at law or the equivalent in a foreign country and has a currently effective State Bar Certificate of Registration as a Foreign Legal Consultant.

3.7 Agree to become familiar with and comply with the standards of professional conduct required of members of the State Bar of California;

3.8 Agree to be subject to the disciplinary jurisdiction of the State Bar of California;

3.9 Agree to be subject to the rights and obligations with respect to attorney-client privilege, work-product privilege, and other professional privileges, to the same extent as attorneys admitted to practice law in California; and

2.2 "Good moral character" is that which is defined in the Rules Regulating Admission to Practice Law in California.

3.10 Agree to comply with the laws of the State of California, the Rules and Regulations of the State Bar of California, and these Rules.

2.3 The "Rules" are these Registered Foreign Legal Consultant Rules and Regulations.

4.0 APPLICATION FOR CERTIFICATION

2.4 The "State Bar" is the chief executive officer of the State Bar, or person or persons designated by the chief executive officer, who shall have the authority to administer and interpret these rules.

4.1 All Applications for Certification must be submitted:

4.1.1 On a form provided by the State Bar;

4.1.2 With all the information requested on the form;

4.1.3 With the appropriate non-refundable processing fee; and

4.1.4 At the designated office of the State Bar.

3.0 ELIGIBILITY FOR CERTIFICATION

To be eligible to become a Registered Foreign Legal Consultant, an applicant must:

4.2 All Applications for Certification must be accompanied by all requested documents, including, but not limited to:

3.1 Present satisfactory proof that the applicant has been admitted to practice and has been in good standing as an attorney or counselor at law or the equivalent in a foreign country for at least four of the six years immediately preceding the application, and while so admitted, has actually practiced the law of that country;

4.2.1 A duly authenticated English translation of any documents not in English;

3.2 Present satisfactory proof that the applicant possesses the good moral character requisite for a person to be licensed as a member of the State Bar of California;

4.2.2 A certificate from the authority in the foreign country having final jurisdiction over professional discipline certifying

3.3 Agree to comply with Section 6.0 relating to security for claims against a Foreign Legal Consultant by his or her clients;

a. that it is the entity having jurisdiction over professional discipline matters;

3.4 Agree to comply with Section 7.0 relating to maintaining an address of record for State Bar purposes;

b. the applicant's date of admission; and

3.5 Agree to notify the State Bar of any change in his or her status in any jurisdiction where he or she is admitted to practice or of any discipline with respect to such admission;

c. that for at least four of the past six years, the applicant has been in good standing as an attorney or counselor at law or the equivalent; and

3.6 Agree to be subject to the jurisdiction of the courts of this state with respect to the laws of the State of California governing the conduct

4.2.3 A letter of recommendation setting forth the applicant's professional qualifications from

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- a. a member of the executive body of the authority having final disciplinary jurisdiction, or
 - b. a judge of the highest law court or court of original jurisdiction of the foreign country.
- 4.2.4 Evidence of the required security for claims, which shall be furnished to the State Bar in the form of a written agreement stating that the Foreign Legal Consultant shall maintain security for claims against the Foreign Legal Consultant due to the Foreign Legal Consultant's acts, errors or omissions and/or dishonest conduct in the rendering of legal services in the amounts as set forth in section 6.0.
- 4.3 Upon a showing that strict compliance with the provisions of Section 4.2 would cause the applicant unnecessary hardship, the State Bar may, in its discretion, waive or vary the application of those provisions and require the applicant to furnish other evidence in lieu thereof.
- 4.4 The State Bar may audit the Foreign Legal Consultant at any time to ensure that the Foreign Legal Consultant in fact has the required security for claims as set forth in rule 6.0.
- 5.0 MORAL CHARACTER REVIEW
- 5.1 Each applicant must be found to possess the good moral character requisite for a person to be licensed as a member of the State Bar of California. The moral character review of all applicants will be conducted by the State Bar's Committee of Bar Examiners. Insofar as applicable and not inconsistent with these rules, the Rules Regulating the Admission to Practice Law in California, as they relate to the determination of whether an applicant for admission as a California attorney is possessed of good moral character, shall be applicable to the determination of whether an applicant for a Certificate of Registration as a Registered Foreign Legal Consultant is possessed of good moral character.
- 5.2 If the Committee of Bar Examiners concludes that the applicant possesses good moral character, it shall certify that the applicant possesses the good moral character requisite for a person to be licensed as a member of the State Bar of California. Otherwise, the Committee of Bar Examiners shall comply with the Rules Regulating Admission to Practice Law in California insofar as they relate to the procedures to be followed when an applicant for admission to practice law in California has been found not to possess the good moral character requisite for a person to be licensed as a member of the State Bar of California.
- 6.0 SECURITY FOR CLAIMS AGAINST A FOREIGN LEGAL CONSULTANT
- 6.1 The Foreign Legal Consultant shall maintain security for claims for pecuniary losses resulting from his or her acts, errors or omissions in the rendering of legal services that is acceptable to the State Bar, as follows:
- 6.1.1 If in the form of insurance and the cost of defense is included in the policy limits, in an amount of at least \$150,000 for each claim, with an aggregate limit of \$450,000 for all claims established against the Foreign Legal Consultant during the calendar year, with a deductible portion not to exceed \$10,000, unless any deductible portion in excess of \$10,000 is secured by means of a letter of credit or a written guarantee executed by an active member of the State Bar of California, a California law firm, California law corporation or financial institution;
- 6.1.2 If in the form of insurance and the cost of defense is not included in the policy limits, in an amount of at least \$100,000 for each claim, with an aggregate limit of \$300,000 for all claims established against the Foreign Legal Consultant during the calendar year, with a deductible portion not to exceed \$10,000, unless any deductible portion in excess of \$10,000 is secured by means of a letter of credit or a written guarantee executed by an active member of the State Bar of California, a California law firm, California law corporation or financial institution;
- 6.1.3 If in the form of a letter of credit, the total amount of the letter of credit must be maintained at all times at no less than \$300,000. The honor from the issuing bank is not to exceed \$100,000 for each claim and \$300,000 for all claims made during the calendar year; or
- 6.1.4 If in the form of a written guarantee executed by an active member of the State Bar of California, a California law firm, California law corporation or financial institution, the total amount of the guarantee must be maintained at all times at no less than \$100,000 for each claim and \$300,000 for all claims made during the calendar year .
- ~~6.2 The Foreign Legal Consultant shall maintain security for claims resulting from pecuniary losses caused by the dishonest conduct of the Foreign Legal Consultant while rendering legal services or acting as a fiduciary or~~

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~~trustee, that is acceptable to the State Bar, in an amount of at least \$50,000 and in the form of:~~

~~6.2.1 Insurance, with a deductible portion not to exceed \$2,000, unless any deductible portion in excess of \$2,000 is secured by means of a letter of credit or a written guarantee executed by an active member of the State Bar of California, a California law firm, California law corporation or financial institution;~~

~~6.2.2 Letter of credit; or~~

~~6.2.3 Written guarantee executed by an active member of the State Bar of California, a California law firm, California law corporation or financial institution;~~

~~6.3 The payments for security for claims resulting from pecuniary losses caused by the dishonest conduct of the Foreign Legal Consultant while rendering legal services or acting as a fiduciary or trustee need not exceed \$50,000 for claims made pertaining to one transaction, matter or proceeding and must be replaced or renewed, if necessary, following payment to maintain coverage sufficient to make such \$50,000 payments.~~

7.0 ADDRESS OF RECORD

7.1 A duly acknowledged instrument in writing shall be submitted to the State Bar with the Foreign Legal Consultant's address in the State of California for State Bar purposes. The instrument shall state that if, after due diligence, service cannot be made upon the Foreign Legal Consultant at his or her State Bar address of record, the State Bar of California is authorized to act as an agent upon whom process may be served, with like effect as if served personally upon the Foreign Legal Consultant, in any action or proceeding brought against the Foreign Legal Consultant arising out of or based upon legal services rendered or offered to be rendered within or to residents of the State of California.

7.2 Service of process on the State Bar of California pursuant to Section 7.1 shall be made by personally delivering to and leaving with a representative authorized by the State Bar to receive service, duplicate copies of the process and the appropriate fee.

8.0 DENIAL OF APPLICATION

8.1 If the State Bar determines to deny an application for certification for any reason, the State Bar shall mail a Notice of Denial of Certification to the applicant that sets forth the reasons for the denial.

8.2 An applicant may request, in writing, a hearing on the denial to approve its application within 15 (fifteen) days after such Notice of Denial of Certification is dated.

8.3 The appropriate Board Committee shall conduct a hearing within 60 (sixty) days of the State Bar's receipt of the request.

8.4 Should the outcome of the hearing permitted by Section 8.2 be adverse to the applicant, the applicant may appeal such decision pursuant to the provisions of California Rule of Court 952(d).

8.5 All proceedings under Section 8.0 shall be confidential, unless otherwise requested by the applicant or ordered by the Board of Governors. Insofar as applicable, the Rules of Procedure of the State Bar shall apply to such proceedings. For the purpose of applying the Rules of Procedure, the word "member" therein shall be deemed to mean "Foreign Legal Consultant."

9.0 PERMITTED ACTIVITIES

A Registered Foreign Legal Consultant may render legal services in California, except that a Registered Foreign Legal Consultant may not:

9.1 Appear for a person other than himself or herself as attorney in any court, or before any magistrate or other judicial officer, in this state or prepare pleadings or any other papers or issue subpoenas in any action or proceeding brought in any court or before any judicial officer;

9.2 Prepare any deed, mortgage, assignment, discharge, lease, or any other instrument affecting title to real estate located in the United States;

9.3 Prepare any will or trust instrument affecting the disposition on death of any property located in the United States and owned by a resident or any instrument relating to the administration of a decedent's estate in the United States;

9.4 Prepare any instrument in respect of the marital relations, rights or duties of a resident of the United States, or the custody or care of the children of a resident; or

9.5 Otherwise render professional legal advice on the law of the State of California, any other state of the United States, the District of Columbia, the United States, or any country other than the country in which the Foreign Legal Consultant is admitted to practice law, whether rendered incident to preparation of legal instruments or otherwise.

10.0 USE OF THE TITLE "FOREIGN LEGAL CONSULTANT"

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- 10.1 In connection with activities performed pursuant to these rules, a Registered Foreign Legal Consultant may use the title "Foreign Legal Consultant" only and may not use any other title than "Foreign Legal Consultant." A Foreign Legal Consultant may not use the title "Foreign Legal Consultant" in connection with activities not performed pursuant to these Rules.
- 10.2 A Foreign Legal Consultant must include the name of the country in which the Foreign Legal Consultant is admitted to practice law when using the title "Foreign Legal Consultant."
- 10.3 A Foreign Legal Consultant may include the name of his or her employer, if any, and the title by which the Foreign Legal Consultant is known in the country in which he or she is admitted to practice law when using the title "Foreign Legal Consultant."
- 10.4 A Foreign Legal Consultant may not in any way hold himself or herself out as a member of the State Bar of California.
- 11.0 DURATION OF CERTIFICATE OF REGISTRATION
- Certification by the State Bar shall commence on the date indicated on the Notice of Registration. The State Bar shall renew the Certificate of Registration, provided that the Foreign Legal Consultant timely submits to the State Bar:
- 11.1 A complete Annual Report/Renewal Form; and
- 11.2 Appropriate Special Report forms, if required.
- 12.0 INVOLUNTARY REVOCATION/SUSPENSION OF CERTIFICATE OF REGISTRATION
- 12.1 The State Bar may suspend the Certificate of Registration of a Foreign Legal Consultant:
- 12.1.1 For failure to file the annual report and pay the filing fee, including any fee for late filing;
- 12.1.2 Sixty days following written notice of delinquency sent to his or her address for State Bar purposes.
- 12.2 The State Bar may revoke/suspend the Certificate of Registration of a Foreign Legal Consultant:
- 12.2.1 If any of the requirements for certification no longer exist; or
- 12.2.2 The Foreign Legal Consultant fails at any time to comply fully with the provisions of these rules.
- 12.3 The State Bar shall mail a Notice of Revocation/Suspension of Certificate of Registration to the Foreign Legal Consultant setting forth the reasons for the determination to revoke/suspend the certificate and stating that the revocation/suspension shall be effective 10 days from the date the State Bar mails the Notice.
- 12.4 A Foreign Legal Consultant may request, in writing, a hearing to stay the revocation of the Certificate of Registration, which hearing the State Bar may allow or disallow upon good cause shown.
- 12.5 Within 15 days of mailing of the Notice of Revocation of Certificate of Registration, the Foreign Legal Consultant may contest the revocation by sending to the State Bar a written request for a hearing to show cause why the Certificate of Registration should be reinstated.
- 12.6 The hearing permitted by Section 12.4 shall be commenced within 60 (sixty) days of the State Bar's receipt of the request.
- 12.7 Should the outcome of the hearing permitted by Section 12.4 be adverse to the applicant, the applicant may appeal such decision pursuant to provisions of California Rule of Court 952(d).
- 12.8 All proceedings under Section 12.0 shall be confidential, unless otherwise requested by the applicant or ordered by the Board of Governors. Insofar as applicable, the Rules of Procedure of the State Bar shall apply to such proceedings. For the purpose of applying the Rules of Procedure, the word "member" therein shall be deemed to mean "Foreign Legal Consultant."
- 13.0 VOLUNTARY REVOCATION OF CERTIFICATE OF REGISTRATION
- The State Bar may revoke the Certificate of Registration of a Foreign Legal Consultant at the request of the Foreign Legal Consultant.
- 14.0 REPORTS
- 14.1 Each Foreign Legal Consultant shall file an Annual Report/Renewal Form covering the calendar year immediately preceding on a form provided by the State Bar. The Annual Report/Renewal Form shall not be accepted unless submitted:
- 14.1.1 On a form provided by the State Bar;
- 14.1.2 With all the information requested on the Annual Report;
- 14.1.3 With the non-refundable processing fee and any penalty fee, if appropriate;
- 14.1.4 At the designated office of the State Bar; and

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- 14.1.5 With a certificate from the authority in the foreign country or countries named by the Foreign Legal Consultant having final jurisdiction over professional discipline of persons admitted to practice law in the country or countries, certifying as to the Registered Foreign Legal Consultant's good standing as an attorney or counselor at law or the equivalent, with a duly authenticated English translation of the certificate if it is not in English, or other proof of good standing as the State Bar may permit.
- 14.1.6 With a Special Report, pursuant to Section 14.2, if applicable.
- 14.1.7 Reinstatement after suspension. A Certificate of Registration suspended under rule 12.1.1 may be reinstated upon the filing of all delinquent annual reports and payment of all accrued fees and penalties, and payment of any fees and penalties due after the suspension but before the date of reinstatement. Reinstatement shall be effective from the date of compliance.
- 14.2 Each Foreign Legal Consultant shall file a Special Report setting forth any changes no more than 30 days after the change as follows:
 - 14.2.1 Address changes shall be filed with the office of the State Bar responsible for regulating Foreign Legal Consultants, in a form acceptable to the State Bar; and
 - 14.2.2 Changes in any of the requirements for certification as set forth in Sections 3.1, 3.3, and 3.5, shall be filed with the office of the State Bar responsible for regulating Foreign Legal Consultants, on a form provided by the State Bar, and must include all information requested on such form.

State Bar of California
Registered Foreign Legal Consultants (RFLC)
As of November 22, 2005

RFLC	Practice Country	Location	Firm
Atis, George J.	Canada	Canada	Solo
Avila-Gonzales, Hector Martin de	Mexico	Sacramento, CA	Solo
Chern, Lindy	Taiwan	Taiwan	Baker & McKenzie
Cordes, Peter R.	Germany	Long Beach, CA	German American Law Group
Desai, Nishith Mandanlal	India	Palo Alto, CA	Nishith Desai Associates
Gardner, Darren Garnet	Australia	San Francisco	Minter Ellison
Gareeb, Medhat	Egypt	Huntington Beach, CA	Solo
Gowans, Andrew John	England & Wales	Palo Alto, CA	Osborne Clark
Gutierrez, Javier	Mexico	Marina Del Ray, CA	Solo
Guzonni, Aurelio	Brazil	Los Angeles, CA	Solo
Hoballah, Wafa J.	Lebanon	Los Angeles, CA	Middle East Law
Huang, John Zhong Lan	China	China	Allbright Law Offices
Kumar, Vinod	Brunei, England & Wales, Malaysia, Singapore	Orange, CA	Hilborne Hawkin Company
Liberman, Michel	France	Los Angeles, CA	Lichter, Grossman, Nichols & Adler
Lobo, Maria	Brazil	Pasadena, CA	Solo
Martinez, Andres G.	Venezuela	Encino, CA	Solo
Melkumian, Sedrak	Armenia	Los Angeles, CA	Solo
Moakher, Hamidreza Bakhshi	Iran	Irvine, CA	Solo
Moon, Seong Keun	South Korea	Torrance, CA	Solo
Moreno, Reina Dina Hidalgo	El Salvador	Van Nuys, CA	Solo
Mulholland, Sylvia Ann	Canada	Los Angeles, CA	Solo
Nava, Laura	Mexico	San Diego, CA	Luce Hamilton
Okada, Ichizo	Japan	Japan	Okada & Company
Quintana-Sosa, Elsa Aida	Mexico	Van Nuys, CA	Solo
Rodriguez-Salazar, Victor	Mexico	Tustion, CA	Solo
Ruiz, Luis Ricardo	Mexico	San Diego, CA	Solo
Ruocco, Roberto	Italy	San Diego, CA	Solo
Sas, Catherine Ann	Canada	Canada	Solo
Saul, Andrew John	England & Wales	Palo Alto, CA	Osborne Clark
Schlee, Richard Alexander	Germany	Manhattan Beach	Viering, Jentschura et al
Schlimoff, Sigalatt	Israel	Israel	Solo
Swycher, Nigel	England & Wales	Los Angeles, CA	Emanuel, Urquart & Hedges, LLP
Vakrinos, Theodore C.	Greece	Alexandria, VA	Solo
Webber, Mark	England & Wales	Palo Alto, CA	Osborne Clarke

Assembly Bill No. 1529

CHAPTER 341

An act to amend Sections 6036, 6140, 6140.5, 6140.55, 6140.6, 6140.9, 6141, and 6141.1 of the Business and Professions Code, relating to attorneys.

[Approved by Governor September 22, 2005. Filed with
Secretary of State September 22, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1529, Jones. Attorneys: membership fees.

Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California, which is governed by the board of governors. Existing law provides that a member of the board of governors must disqualify himself or herself from making, participating in the making of, or attempting to influence any decision of the board or a committee of the board if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public or members of the State Bar generally on specified interests of the member.

This bill would instead require self-disqualification by a member with regard to any decision in which he or she has a financial interest, as defined, which it is reasonably foreseeable may be affected materially by the decision.

Existing law authorizes the State Bar, until January 1, 2006, to charge an annual membership fee of up to \$310 to active members of the State Bar.

This bill would increase the amount that the bar may charge active members to up to \$315 per year as of January 1, 2007. The bill would change the termination date relating to the State Bar's authority to charge this membership fee to January 1, 2008.

Existing law authorizes the State Bar to increase the annual membership fees up to \$35 for active members in any year, to be applied to the Client Security Fund.

This bill would instead authorize the State Bar to increase the annual membership fees up to \$40 for active members and up to \$10 for inactive members in any year for this purpose.

Existing law authorizes the State Bar to increase the annual membership fees for active members by up to \$25 for active members for costs of the disciplinary system.

This bill would also authorize the State Bar to increase the annual membership fees for inactive members by that amount.

Existing law establishes the Client Security Fund for the purpose of relieving or mitigating pecuniary losses caused by the dishonest conduct of active members of the State Bar.

This bill would expand the purpose of the Client Security Fund to include relieving or mitigating pecuniary losses caused by the dishonest conduct of Foreign Legal Consultants registered with the State Bar and attorneys registered with the State Bar under the Multijurisdictional Practice Program.

Existing law establishes the Attorney Diversion and Assistance Program and authorizes the State Bar to charge active members an annual fee of \$10 for administration of the program.

This bill would also authorize the State Bar to charge inactive members an annual fee of \$5 for this purpose.

Existing law authorizes the State Bar to charge an annual membership fee of up to \$40 for inactive members.

This bill would instead authorize the State Bar to charge inactive members an annual fee of up to \$65 until December 31, 2006, and an annual fee of up to \$75 on and after January 1, 2007.

Existing law requires a waiver of 25% of the State Bar annual membership fee if the member's income derived from the practice of law, including dispute resolution services, is less than \$40,000, and a waiver of 50% of the fee when income is less than \$30,000.

This bill would instead require a waiver of 25% of the annual membership fee when income from all sources is less than \$40,000.

The people of the State of California do enact as follows:

SECTION 1. Section 6036 of the Business and Professions Code is amended to read:

6036. (a) Any member of the board of governors must disqualify himself or herself from making, participating in the making of, or attempting to influence any decisions of the board or a committee of the board in which he or she has a financial interest, as that term is defined in Section 87103 of the Government Code, that it is reasonably foreseeable may be affected materially by the decision.

(b) Any member of the board of governors must likewise disqualify himself or herself when there exists a personal nonfinancial interest which will prevent the member from applying disinterested skill and undivided loyalty to the State Bar in making or participating in the making of decisions.

(c) Notwithstanding subdivisions (a) and (b), no member shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the action or decision to be made. The fact that a member's vote is needed to break a tie does not make his or her participation legally required for the purposes of this section.

(d) A member required to disqualify himself or herself because of a conflict of interest shall (1) immediately disclose the interest, (2) withdraw from any participation in the matter, (3) refrain from attempting to influence another member, and (4) refrain from voting. It is sufficient for the purpose of this section that the member indicate only that he or she has a disqualifying financial or personal interest.

(e) For purposes of this article and unless otherwise specified, “member” means any appointed or elected member of the board of governors.

SEC. 2. Section 6140 of the Business and Professions Code is amended to read:

6140. (a) The board shall fix the annual membership fee for active members for 2006 at a sum not exceeding three hundred ten dollars (\$310).

(b) The board shall fix the annual membership fee for active members for 2007 and thereafter at a sum not exceeding three hundred fifteen dollars (\$315).

(c) The annual membership fee for active members is payable on or before the first day of February of each year. If the board finds it appropriate and feasible, it may provide by rule for payment of fees on an installment basis with interest, by credit card, or other means, and may charge members choosing any alternative method of payment an additional fee to defray costs incurred by that election.

(d) This section shall remain in effect only until January 1, 2008, and, as of that date, is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 3. Section 6140.5 of the Business and Professions Code is amended to read:

6140.5. (a) The board shall establish and administer a Client Security Fund to relieve or mitigate pecuniary losses caused by the dishonest conduct of active members of the State Bar, Foreign Legal Consultants registered with the State Bar, and attorneys registered with the State Bar under the Multijurisdictional Practice Program, arising from or connected with the practice of law. Any payments from the fund shall be discretionary and shall be subject to regulation and conditions as the board shall prescribe. The board may delegate the administration of the fund to the State Bar Court, or to any board or committee created by the board of governors.

(b) Upon making a payment to a person who has applied to the fund for payment to relieve or mitigate pecuniary losses caused by the dishonest conduct of an active member of the State Bar, the State Bar is subrogated, to the extent of that payment, to the rights of the applicant against any person or persons who, or entity that, caused the pecuniary loss. The State Bar may bring an action to enforce those rights within three years from the date of payment to the applicant.

(c) Any attorney whose actions have caused the payment of funds to a claimant from the Client Security Fund shall reimburse the fund for all

moneys paid out as a result of his or her conduct with interest, in addition to payment of the assessment for the procedural costs of processing the claim, as a condition of continued practice. The reimbursed amount, plus applicable interest and costs, shall be added to and become a part of the membership fee of a publicly reprovved or suspended member for the next calendar year. For a member who resigns with disciplinary charges pending or a member who is suspended or disbarred, the reimbursed amount, plus applicable interest and costs, shall be paid as a condition of reinstatement of membership.

(d) Any assessment against an attorney pursuant to subdivision (c) that is part of an order imposing a public reproof on a member or is part of an order imposing discipline or accepting a resignation with a disciplinary matter pending, may also be enforced as a money judgment. This subdivision does not limit the power of the Supreme Court to alter the amount owed or to authorize the State Bar Court, in the enforcement of a judgment under this subdivision, to approve an agreement for the compromise of that judgment.

SEC. 4. Section 6140.55 of the Business and Professions Code is amended to read:

6140.55. The board may increase the annual membership fees fixed by it pursuant to Section 6140 by an additional amount per active member not to exceed forty dollars (\$40), and the annual membership fees fixed by it pursuant to Section 6141 by an additional amount per inactive member not to exceed ten dollars (\$10), in any year, the additional amount to be applied only for the purposes of the Client Security Fund and the costs of its administration, including, but not limited to, the costs of processing, determining, defending, or insuring claims against the fund.

SEC. 5. Section 6140.6 of the Business and Professions Code is amended to read:

6140.6. The board may increase the annual membership fees fixed by Sections 6140 and 6141 by an additional amount not to exceed twenty-five dollars (\$25) to be applied to the costs of the disciplinary system.

SEC. 6. Section 6140.9 of the Business and Professions Code is amended to read:

6140.9. Moneys for the support of the program established pursuant to Article 15 (commencing with Section 6230) and related programs approved by the committee established pursuant to Section 6231 shall be paid in whole or part by a fee of ten dollars (\$10) per active member per year, and by a fee of five dollars (\$5) per inactive member per year.

The board may seek alternative sources for funding the program. To the extent that funds from alternative sources are obtained and used for the support of the program, and provided that at least ten dollars (\$10) per active member and five dollars (\$5) per inactive member is available for support of the program each year, funds provided by the fee established by this section may be applied to the costs of State Bar general fund programs.

SEC. 7. Section 6141 of the Business and Professions Code is amended to read:

6141. (a) Until December 31, 2006, the board shall fix the annual membership fee for inactive members at a sum not exceeding sixty-five dollars (\$65). On January 1, 2007, and thereafter, the board shall fix the annual membership fee for inactive members at a sum not exceeding seventy-five dollars (\$75). The annual membership fee for inactive members is payable on or before the first day of February of each year.

(b) An inactive member shall not be required to pay the annual membership fee for inactive members for any calendar year following the calendar year in which the member attains the age of 70 years.

SEC. 8. Section 6141.1 of the Business and Professions Code is amended to read:

6141.1. (a) The payment by any member of the annual membership fee, any portion thereof, or any penalty thereon, may be waived by the board as it may provide by rule. The board may require submission of recent federal and state income tax returns and other proof of financial condition as to those members seeking waiver of all or a portion of their fee or penalties on the ground of financial hardship.

(b) The board shall adopt a rule or rules providing that an active member who can demonstrate total gross annual individual income from all sources of less than forty thousand dollars (\$40,000) shall presumptively qualify for a waiver of 25 percent of the annual membership fee.